



## Document A103™ – 2007

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work plus a fee without a Guaranteed Maximum Price**

AGREEMENT made as of the 15th day of April in the year 2015  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Spokane South Medical, LLC  
16114 East Indiana  
Suite 200  
Spokane, WA 99216

and the Contractor:  
(Name, legal status, address and other information)

Hospitality Builders, Inc.  
150 Knollwood Drive  
Rapid City, SD 57701

for the following Project:  
(Name, location and detailed description)

109 - Unit Hampton Inn & Suites  
Spokane, WA

The Architect:  
(Name, legal status, address and other information)

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

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**ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 4.1 The date of commencement of the Work shall be the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement, or if applicable, state that the date will be fixed in a notice to proceed.)*

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

July 15, 2015

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall use its best efforts to achieve Substantial Completion of the entire Work

*(Paragraphs deleted)*

approximately 365 calendar days from the date of first pour of concrete footings.

**ARTICLE 5 CONTRACT SUM**

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the actual Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

A sum equal to 12.5% of the Cost of the Work. The Contractor shall be paid no less than ninety percent (90%) of the proportional amount of its Fee with each progress payment, and the balance of its Fee shall be paid at the time of final payment.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**ARTICLE 6 CHANGES IN THE WORK**

§ 6.1 The Owner may request Changes in the Work as provided in the Contract Documents. Contractor shall be paid and reimbursed for Changes in the Work on the basis of Cost of the Work as defined in Article 7, together with the Contractor's Fee in the as stated Article 5 of this Agreement, unless otherwise stipulated by Contractor

*(Paragraphs deleted)*

**ARTICLE 7 COSTS TO BE REIMBURSED****§ 7.1 COST OF THE WORK**

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include the items set forth in this Article 7. For purposes of calculating the Contractor's Fee, the Cost of the Work shall not include the costs of purchasing the phone system, furniture, fixtures and equipment, and signage for the Project. Such costs will be paid or reimbursed by the Owner, but shall not be subject to the Contractor's Fee. The Costs of transporting, installing and insuring such items are included in the Cost of the Work under this Article and shall be subject to the Contractor's Fee.

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Salary, expenses and other benefits of the Project Supervisor are as set forth in paragraph 7.1.24, together with the salaried on site Contractor's personnel when stationed at the job site field office, in whatever capacity employed. Personnel engaged, at shops or on the road, in expediting the production or transportation of materials



or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on the Work.

*(Paragraph deleted)*

§ 7.1.3 Cost of contributions, assessments or taxes incurred during the performance of the Work for such items as unemployment compensation, worker's compensation, and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and included in the Cost of the Work under Subparagraphs 7.1.1 and 7.1.2.

§ 7.1.4 The portion of reasonable and necessary travel and subsistence expenses of the Contractor or of its officers, employees and agents incurred while traveling in discharge of duties specifically connected with the Work at the request of the Owner, other than regularly scheduled periodic trips to the site by Contractor's Project Managers or officers; *provided, however*, that this shall not be interpreted to include overhead or general expenses as provided in Section 8.1.5.

*(Paragraph deleted)*

§ 7.1.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation and insuring the same. *Provided, however*, for purposes of calculating the Contractor's Fee, the Cost of the Work shall not include the costs of purchasing the phone system, furniture, fixtures and equipment, and signage for the Project. Such costs will be paid or reimbursed by the Owner, but shall not be subject to the Contractor's Fee. The Costs of transporting, installing and insuring such items are included in the Cost of the Work under Article 7 and shall be subject to the Contractor's Fee.

*(Paragraphs deleted)*

§ 7.1.6 Payments made by the Contractor to Subcontractors for Work performed pursuant to subcontracts under this Agreement.

§ 7.1.7 Costs, including transportation and maintenance, of all materials, replacement materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.

*(Paragraph deleted)*

§ 7.1.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof.

*(Paragraph deleted)*

§ 7.1.9 Cost of premiums, and deductible amounts in the event of a loss, for all insurances and bonds which the Contractor is required by the Contract Documents to purchase and maintain.

§ 7.1.10 Sales, use, excise or similar taxes related to the Work and for which the Contractor is liable imposed by any governmental authority.

*(Paragraph deleted)*

§ 7.1.11 Permits, fees, royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes other than the Contractor's negligence. If requested by Contractor to expedite the Work, Owner shall advance these costs outside the normal draw process.

*(Paragraphs deleted)*

§ 7.1.12 [Omitted].

§ 7.1.13 All costs arising or flowing from the necessary termination or removal of, or other action with regard to, a defaulting or non-performing Subcontractor, including but not limited to the costs of replacing such subcontractor, paying and discharging claims or liens of laborers, suppliers or sub-subcontractors, and the costs, including bond premiums, and legal and expert's fees and expenses reasonably incurred in prosecuting or defending any legal

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proceedings, claims or disputes with a Subcontractor, unless such costs are solely attributable to the negligence of Contractor.

*(Paragraph deleted)*

§ 7.1.14 Expenses such as telegrams, long distance telephone calls and fax charges, Supervisor's cell phone charges, postage, express mail charges, telephone service at the site, expressage, and similar items in connection with the Work.

*(Paragraph deleted)*

§ 7.1.15 Costs of cleanup and removal of all debris.

*(Paragraph deleted)*

§ 7.1.16 Costs incurred due to an emergency affecting the safety of persons and property, including costs to protect the job site or construction completed thereon, including extra costs incurred due to labor strife, riots, or civil disobedience.

*(Paragraph deleted)*

§ 7.1.17 Other costs necessarily incurred by Contractor in the performance of the Work.

*(Paragraphs deleted)*

§ 7.1.18 To the extent that Contractor has supplied labor or materials to a Subcontractor which reduces the amount payable to such Subcontractor, then Contractor shall be entitled to payment from Owner to the extent that such Subcontractor's billings are reduced.

*(Paragraph deleted)*

§ 7.1.19 All utility costs of any nature used at the site and all nonrefundable deposits with respect to the same.

*(Paragraphs deleted)*

§ 7.1.20 All costs of temporary facilities such as toilet and storage facilities used on the Project.

*(Paragraphs deleted)*

§ 7.1.21 The cost of hiring security, including security fencing and guards used on said project, if the Contractor reasonably deems such security to be necessary for the same, or if Owner requests such security.

*(Paragraph deleted)*

§ 7.1.22 Costs of all architects, engineers, site engineering, soil tests or product quality tests incurred or paid by Contractor with respect to said Project.

*(Paragraphs deleted)*

§ 7.1.23 All costs with respect to any rework or changes demanded by local, state or federal inspectors or authorities.

*(Paragraph deleted)*

§ 7.1.24 Without excluding any of the items listed in Article 7, Owner shall also be liable for paying the following costs commencing at such time as the Owner requests the Project Supervisor to be permanently assigned to the Owner's Project:

For the lump sum fee of \$17,000.00 per month the following job costs are included:

1. All Supervision and truck costs.
2. All Subsistence.
3. All lodging and utilities.
4. All supervisor travel.
5. All phone charges on job site and cell phone charges.
6. All express mail.
7. All truck and gas repairs.
8. Miscellaneous hand tools.
9. Miscellaneous allowances.

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The costs outlined above shall continue until the time that the Project is Substantially Completed, or the Owner releases the Project Supervisor from the Project, whichever occurs last.

*(Paragraphs deleted)*

§ 7.1.25 If architecture services have not been separately contracted by Owner and are to be arranged in connection with this Agreement, Owner agrees the following costs shall apply.

1. Owner shall further pay to Contractor a one-time fee of \$4,000.00 to cover the agreed costs for sufficient blueprints of the plans and specifications for permitting, bidding and construction, and miscellaneous associated costs not covered elsewhere herein.
2. Owner agrees to pay 0.00 to cover the involvement and services of a registered architect to prepare, review and certify the plans and specifications, and Contractor's services for arranging and coordinating project documents. Site engineering (land survey, site layout, civil and soils testing) is not included in these costs.
3. Owner expressly acknowledges and agrees that Contractor is not a licensed or registered architect, and will not function as architect or engineer nor furnish or perform architectural services with respect to the Project. Owner further acknowledges and agrees that Contractor is hereby appointed and authorized in Owner's behalf as Owner's agent to obtain and coordinate architectural and engineering services from licensed architects and engineers, duly authorized and registered to perform such services in the state where the project is located. Owner agrees to reimburse Contractor for the Costs of architectural services, together with Contractor's nonprofessional services associated therewith, in accordance with the preceding paragraph.
4. Owner expressly acknowledges and agrees that Contractor makes no warranties nor representations, and assumes no liability as to the suitability, accuracy or completeness of any architectural plans, drawings or specifications prepared or furnished to Owner in connection with the Project. Owner expressly acknowledges and agrees that any such plans may not be suitable or sufficient for use by other general contractors in the event this Contract is terminated for any reason. In the event Contractor terminates this Contract for cause or Owner abandons the Project, Owner shall return to Contractor all architectural plans, drawings and other documents which were arranged or coordinated through Contractor, together with all copies thereof, and Owner shall not use or copy the same. In the event of termination of this contract for any reason, Owner agrees that the fees specified in Subparagraphs 7.1.25.1 and .2 above, may not be sufficient to cover all architectural and engineering costs incurred with respect to the Project, and Owner shall be liable for and pay any such architectural and engineering fees and costs in excess of the amounts specified above.

*(Paragraphs deleted)*

§ 7.1.26 Consulting fees paid at Owner's direction for development and construction consulting services to Owner during the Project.

*(Paragraphs deleted)*

#### ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

§ 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3, or as may be provided in Article 14.

§ 8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

§ 8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ 8.1.5 Rental costs of machinery and equipment, except as provided in Section 7.1.8.

§ 8.1.6 Except as otherwise specifically provided under Article 7 of this Agreement, costs due solely to the

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negligence or failure to fulfill a specific responsibility of the Contractor.

§ 8.1.7 For purposes of calculating the Contractor's Fee, the Cost of the Work shall not include the costs of purchasing the phone system, furniture, fixtures and equipment, and signage for the Project. Such costs will be paid or reimbursed by the Owner, but shall not be subject to the Contractor's Fee. The Costs of transporting, installing and insuring such items are included in the Cost of the Work under Article 7 and shall be subject to the Contractor's Fee.

§ 8.1.8 Any cost not described in Article 7.

#### ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site, *provided, however*, that this shall not include the Architect or its employees or agents, nor any engineer, surveyor, testing company, or similar provider of professional services with respect to the project. Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. Unless otherwise required by the Contract Documents, the Contractor, as soon as practicable after the award of the Contract, shall notify the Owner of the names of Subcontractors for each of the principal portions of the Work. The Contractor shall not employ any Subcontractor to whom the Owner may have a reasonable objection, provided that the Owner gives Contractor prompt written notice of such objection, and the reasons therefore, before a Subcontract is awarded. The Contractor shall not be required to contract with anyone to whom Contractor has a reasonable objection. Contracts between the Contractor and the Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner.

*(Paragraph deleted)*

#### ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

#### ARTICLE 12 PAYMENTS

##### § 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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§ 12.1.2 The Contractor shall, on or after the 20<sup>th</sup> of each month during the course of the Project, submit to the Owner an Application for Payment consisting of a sworn itemized statement, showing all monies paid out or costs incurred by Contractor on Account of the Costs of Work during the period since the previous application for payment, and certifying the amount for which Contractor is to be paid or reimbursed under Section 5.1 and the amount of the Contractor's Fee due as provided in Section 5.1.1, together with appropriate waiver(s) of liens to the extent of payments actually received from Owner through the period covered by the previous application for payment, and such other documentation as Contractor considers appropriate to support Contractor's right to payment under the Contract Documents.

§ 12.1.3 The Owner shall cause the amount certified in each of Contractor's monthly Applications for Payment to be paid to Contractor by no later than the 10<sup>th</sup> day of the month following the current Application. Any failure of Owner's lender or other agents to promptly review and approve Contractor's Applications for Payment by the date when payment is due shall not excuse or delay payment by Owner. If complete payment of any Application for Payment is not received in Contractor's home office by the 10<sup>th</sup> day of the month following the current Application, Contractor shall have the right in its sole discretion and without further notice to suspend the Work until Contractor receives full payment and interest, together with any other damages or costs incurred by Contractor as a result of such non-payment and suspension and any re-activation of the Work.

Until the percentage of completion of the Work reaches fifty percent (50%), retainage of not more than ten percent (10%) may be withheld from the amount of each progress payment to Contractor, except for that portion of the payment representing materials and supplies delivered to and incorporated into the Work or stored on site for subsequent incorporation into the Work, to which no retainage shall apply. After the percentage of completion of the Work reaches fifty percent (50%), total retainage shall be reduced to five percent (5%) of the total amount of the Contract Sum allocable to completed Work and materials delivered and stored on site, and the retainage withheld from the amount of each progress payment shall be adjusted accordingly, except for that portion of the payment representing materials and supplies delivered to and incorporated into the Work or stored on site for subsequent incorporation into the Work, to which no retainage shall apply. Contractor shall apply retention at least equal to the foregoing to progress payments to Subcontractors, provided that Contractor may apply to Owner for and release retainage to a Subcontractor 30 days after a Subcontractor has fully completed his portion of the Work.

*(Paragraphs deleted)*

## § 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor

*(Paragraphs deleted)*

within 30 days after Substantial Completion of the Work and issuance of Contractor's Application for final payment.

§ 12.2.2 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

*(Paragraphs deleted)*

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1

*(Paragraphs deleted)*

The Contract may be terminated by the Contractor as provided in the Contract Document.

### § 13.2

*(Paragraphs deleted)*

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or otherwise materially breaches this Agreement, the Owner may, after seven days' written notice to the

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Contractor and without prejudice to any other remedy Owner may have, make good such deficiencies and may deduct the cost thereof, from the payment then or thereafter due the Contractor or, at his option, and upon certification by the Architect that sufficient cause exists to justify such action, may terminate the Contract and take possession of the site and of all materials and equipment thereon previously paid for the Owner and may finish the Work by whatever method Owner may deem expedient.

§ 13.3 If the Owner fails to make payment according to Contractor's applications for payment for a period of thirty days from the date of submittal or otherwise materially breaches this Agreement, the Contractor may, upon seven additional day's written notice to the Owner and without prejudice to any other remedy Contractor may have, terminate the Contract, stop all Work and recover from the Owner payment for the Costs of all Work executed and the Contractor's Fee thereon.

#### ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

#### § 14.2

*(Paragraphs deleted)*

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

12% per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

#### § 14.3 The Owner's representative is:

James Mulloy  
Spokane South Medical, LLC  
16114 E. Indiana  
Suite 200  
Spokane, WA 99216

#### § 14.4 The Contractor's representative is:

Kevin Krank  
Hospitality Builders, Inc.  
150 Knollwood Drive  
Rapid City, SD 57701

§ 14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

#### § 14.6 Other provisions:

*See Addendum and Supplementary Conditions to Contract*

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**ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS**

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997, as revised herein, together with any Addenda and Supplementary Conditions hereof.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997, subject to and as qualified and modified by the Addenda and Supplementary Conditions to this Contract.

§ 15.1.3 The Supplementary and other Conditions of the Contract are as follows:

Addendum and Supplementary Conditions to Contract accompanying this Agreement;

Document	Date	Pages
Addendum & Supplementary Conditions to the Contract for Construction	April 15, 2015	8

*(Paragraphs deleted)*

§ 15.1.4 The Specifications are as follows:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement)*

Title of Specifications exhibit:

§ 15.1.5 The Drawings are as follows, and are dated \_\_\_\_\_ unless a different date is shown below:  
Title of Drawings exhibit: (drawings not complete)

§ 15.1.6 The Addenda, if any, are as follows

Addendum and Supplementary Conditions to Contract accompanying this Agreement:

Number	Date	Pages
Addendum and Supplementary Conditions to the Contract for Construction	April 15, 2015	8

§ 15.1.7 Other Documents, if any forming part of the Contract Documents are as follows:

**ARTICLE 16 INSURANCE AND BONDS****§ 16.1 CONTRACTOR'S LIABILITY INSURANCE**

§ 16.1.1 The Contractor shall purchase and maintain insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor, by anyone directly or indirectly employed Contractor, or by anyone for whose acts Contractor may be liable:

16.1.1.1 claims under workers' compensation, disability benefit and other similar employee benefit acts, which are applicable to the Work to be performed;

16.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;



16.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

16.1.1.4 claims for damages insured by usual personal injury or liability coverage;

16.1.1.5 claims for damages, other than the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

16.1.1.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and

16.1.1.7 claims for bodily injury or property damage arising out of completed operations.

§ 16.1.2 The insurance required by Subparagraph 16.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 16.1.3 Certificates of insurance acceptable to the Owner shall, if requested by Owner, be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 16.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment if requested by the Owner.  
(Table deleted)

#### § 16.2 OWNER'S LIABILITY INSURANCE

§ 16.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § 16.3 PROPERTY INSURANCE

§ 16.3.1 Unless otherwise provided, the Contractor shall purchase as a Cost of the Work and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount at least equal to the initial estimated total Cost of the Work plus the Contractor's Fee, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in the Contract Documents, or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 16.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and the Sub-subcontractors in the Project, and the cost thereof shall be charged to the Owner as a Cost of the Work plus the Contractor's Fee.

16.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

16.3.1.2 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

16.3.1.3 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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16.3.1.4 Partial occupancy or use of the Project by the Owner shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 16.3.2 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 16.3.3 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and cost thereof shall be charged to the Owner as a Cost of the Work together with Contractor's Fee thereon, unless otherwise allocated between the parties by appropriate Change Order.

§ 16.3.4 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under the policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 16.3.6 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 16.3.5 Before an exposure to loss may occur, each party shall file with the other party a copy of each policy that includes insurance coverages required by this Paragraph 16.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 16.3.6 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 16.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees or any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 16.3.7 A loss insured under property insurance shall be adjusted by the Owner or Contractor, as applicable, as fiduciary and made payable to the fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 16.3.9. The Contractor shall pay Subcontractors their just share of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractor in similar manner.

§ 16.3.8 If required in writing by a party in interest, the Owner or Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the fiduciary's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The fiduciary shall deposit in a separate account proceeds so received, which the fiduciary shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with arbitration award in which case the procedure shall be as provided elsewhere in the Contract Documents. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with the Contract Documents.

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§ 16.3.9 The fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved by arbitration as provided in the Contract Documents. The fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

This Agreement entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

(Signature)

James Mulloy - Owner MEMBER  
Spokane South Medical, LLC

CONTRACTOR

(Signature)

Kevin Krank Vice President  
Hospitality Builders, Inc.

(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraph deleted)(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)(Paragraphs deleted)

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- 4.14 In the event Contractor makes payment to a Subcontractor hereunder in reasonable reliance on the Subcontractor's duly executed application for payment including his certification that all laborers and materialmen have been paid, and in the further event that a laborer, material supplier or sub-subcontractor of such Subcontractor files a mechanic's lien upon the premises, the Owner agrees to reimburse the Contractor for all additional costs and payments incurred with respect to the same to the extent they are not paid by such Subcontractor.
- 4.15 The Owner shall be responsible for the final cleaning prior to opening, including, but not limited to, removal of labels from windows and materials, making beds, washing windows, floors, tubs, sinks, etc.
- 4.16 The Owner or its designated representative and the Contractor shall execute a "Motel Acceptance and Release Agreement" prior to the release of Contractor's Project Supervisor from the project. If the Owner directs the release of the Supervisor from the project and the Supervisor leaves before Owner signs the "Motel Acceptance and Release Agreement", it will be deemed the Owner has no exceptions to the Work as completed, as the Supervisor may only be released by order of the Owner.

## ARTICLE 5 CONTRACTOR

- 5.1 The Contractor shall supervise and direct the Work, using Contractor's best skill and attention and Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- 5.2 Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work; provided, however, that all such shall be deemed Costs of the Work to be paid and/or reimbursed in accordance with this Agreement, and further provided that Contractor's obligation to pay such Costs shall be contingent on Contractor's timely receipt from Owner of payments according to Contractor's applications for payment.
- 5.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.
- 5.4 The Contractor warrants to the Owner that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from material faults and defects and in material conformance with the Contract Documents. All Work not conforming to these requirements may be considered defective and subject to the warranty obligations contained in Article 11 of these Supplementary Conditions.

- 5.4.1 **Disclaimer as to Synthetic Stucco/EIFS.**  
Notwithstanding the preceding subparagraph or any other provisions of the Contract Documents, it is expressly agreed that no warranties, express or implied, shall apply or be enforceable against Contractor with respect to the use of synthetic stucco, also known as Exterior Insulating and Finish System ("EIFS") for the exterior finish of all or part of the Project. Owner acknowledges the existence of claims that the use of EIFS products for exterior finishes may cause increased levels of humidity within structures. Owner acknowledges the increased level of humidity has been claimed to have caused: (a) mold, mildew, and fungi growth on the interior walls and window frames; (b) cracking of interior drywall surfaces; (c) cracking, peeling, and bubbling of paint; (d) cracking of the EIFS dressing bands around windows; (e) delamination - EIFS coming loose from structural sheathing; (f) rotting of wood trim; and (g) rotting of wood structural components resulting in a loss of structural integrity. If EIFS or similar products are specified and used for the Project, Owner acknowledges Owner shall be responsible for requesting and securing a copy of the manufacturer's maintenance instructions for the EIFS product. Owner shall be solely responsible at



Owner's expense for inspecting and maintaining the EIFS product, on a continuing basis, following the occupancy of the Project by Owner. If EIFS products are used for the Project, Owner shall conclusively be deemed to have fully investigated the use of EIFS products for exterior finishes, and to have understood the potential problems that may result from the use of EIFS products, including those related to the failure to inspect and maintain EIFS products on a continuing basis. In addition, any use of EIFS products for the Project shall conclusively be deemed based on Owner's investigation, understanding and decision, and not upon any recommendations, representations or warranties made by Contractor, its employees or agents. Owner assumes all risks associated with the use of the EIFS product for the exterior finish of the Project. Owner waives any claims of any nature against Contractor and releases Contractor, its shareholders, directors, officers, employees, agents, successors and assigns from any claims of any nature, related to increased levels of humidity, mold, mildew, fungi, cracking of drywall, paint problems, cracking and/or delamination of the EIFS product, rotting of wood substructures, loss of structural integrity, and any other problem, known or unforeseen, related to the use of the EIFS product for the exterior finish of the Project. Owner assumes all risks associated with the use of the EIFS product for the exterior finish of the Project.

- 5.5 Unless otherwise provided in the Contract Documents, the Contractor shall pay all sales, consumer, use and other similar taxes which are legally enacted at the time bids are received, and shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work; provided, however, that all such shall be deemed Costs of the Work to be paid or reimbursed by Owner together with Contractor's Fee in accordance with this Agreement.
- 5.6 The Contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the Contractor's performance of the Work.
- 5.7 The Contractor shall be responsible to the Owner for the acts and omissions of Contractor's officers and employees.
- 5.8 The Contractor at all times shall keep the premises reasonably free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Work Contractor shall remove all its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. However, final pre-opening cleanup shall be provided by Owner.
- 5.9 (Omitted)
- 5.10 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and (2) is caused solely by the negligent act or omission of the Contractor. The obligations of the Contractor under this Paragraph shall not cover or extend to any negligent act or omission of any Subcontractor, the Architect, or any other person other than Contractor, its officers and employees.

#### **ARTICLE 6** **WORK BY OWNER OR BY** **SEPARATE CONTRACTORS**

- 6.1 The Owner shall not perform Work related to the Project with Owner's own forces nor award separate contracts in connection with other portions of the Project or other Work on the site, except with the prior written consent of the Contractor in its sole discretion, and on such terms and conditions as Contractor may require. If the Contractor incurs additional costs or damages because



of such action by the Owner, the same shall be reimbursed as Costs of the Work plus Contractor's Fee thereon.

- 6.2 In the event Contractor gives its prior written consent to work by the Owner or separate contractors, the Contractor shall afford the Owner and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.
- 6.3 Any costs caused by defective or ill-timed work performed by the Owner or by any permitted separate contractor shall be borne by the party responsible therefore and reimbursed to the Contractor as Costs of the Work plus Contractor's Fee thereon.
- 6.4 The Owner will not perform any work on the project by itself, except final pre-opening cleanup, unless itemized here:

#### ARTICLE 7 MISCELLANEOUS PROVISIONS

- 7.1 The Contract shall be governed by the law of the State of South Dakota, without regard to any conflicts of law principles, unless otherwise agreed between the parties. The parties expressly and specifically agree that the exclusive forum and venue of any litigation or legal proceedings arising under the Contract Documents shall be the United States District Court for the District of South Dakota, Northern Division, or the Fifth Judicial Circuit Court of South Dakota for Brown County, and the parties hereby consent and submit to the jurisdiction thereof and waive any objections relating to such forum and venue.
- 7.2 All claims or disputes between the Contractor and the Owner arising out of, or relating to, the Contract or the Contract Documents or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. The parties specifically and expressly agree that the hearing locale for any arbitration proceedings conducted under the Contract Documents shall be in Aberdeen, South Dakota. Notice of the demand for arbitration shall be filed in writing with the other party to the Owner-Contractor Agreement and with the American Arbitration Association according to the applicable Rules. Any claims or disputes between Contractor and one or more Subcontractors shall be consolidated and joined with arbitration between Contractor and Owner where it is shown that (1) the parties are substantially involved in one or more common questions of fact or law, or (2) in the absence of such consolidation complete relief cannot be accorded in the arbitration, and (3) the interest or responsibility of the person(s) to be joined is not insubstantial. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable under prevailing Federal and State arbitration laws. In any legal proceedings to compel arbitration in accordance with this agreement, or to stay litigation pending such arbitration, the prevailing party shall be entitled to recover its attorney fees and expenses from the other party.
- 7.3 The provisions of the Uniform Commercial Code section 2-615 shall be deemed applicable to this Contract regardless of the fact that this Contract is in part for services.

#### ARTICLE 8 TIME

- 8.1 All time limits stated in the Contract Documents are of the essence of the Contract. The Contractor shall expedite the Work, but shall not guarantee Substantial Completion within the Contract Time, and shall incur no liability to Owner for substantial completion occurring beyond the Contract Time stated in this Contract or any Change Order.



8.2 The Date of Substantial Completion of the Work is the earliest of the following: (a) the date when a Certificate of Occupancy allowing occupancy and use of the project is issued by the appropriate governmental authority; (b) in the event the issuance of a Certificate of Occupancy is delayed for reasons beyond Contractor's control, the date when construction is sufficiently complete so that the Owner could occupy or utilize the Work for the use for which it is intended (whether or not a Certificate of Occupancy has been issued); or (c) the date when the Owner or his representative releases the Contractor's Supervisor from the job site.

8.3 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work; by Owner's failure to pay Contractor's applications for payment when due or Owner's failure to perform other obligations under this Agreement; by stoppage or suspension of the Work; by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any causes beyond the Contractor's control; or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time. Owner agrees to approve and sign an appropriate Change Order for such extension within five (5) calendar days of Contractor's submission thereof to Owner, and if Owner fails to sign such Change Order within such time the same shall be conclusively deemed approved.

#### **ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY**

9.1 The Contractor shall be responsible for initiating, maintaining, and supervising appropriate safety precautions and programs in connection with the Work. Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons on the site, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority applicable to Contractor bearing on the safety of persons and property and their protection from damage, injury or loss.

#### **ARTICLE 10 CHANGES IN THE WORK**

10.1 The Owner, without invalidating the Contract, may request Changes in the Work consisting of additions, deletions, or modifications, subject to appropriate adjustment of the Contract Time and any additional Costs of the Work plus Contractor's Fee. Owner shall submit any request for such Change in the Work in writing to Contractor. Owner agrees to approve and sign a Change Order for any such Changes requested by Owner within five (5) calendar days after Contractor's submission of such Change Order to Owner, and if Owner fails to sign the same such Change Order shall be conclusively deemed approved.

#### **ARTICLE 11 CORRECTION OF WORK**

11.1 The Contractor shall promptly correct any defective Work found not to comply with Contractor's warranties contained in Paragraph 5.4 within a period of one year from Substantial Completion, provided that Contractor receives written notice of such defective Work from Owner promptly after Owner has knowledge of the same and within such one-year period; and *provided, however*, that the correction of Work found to be defective or nonconforming through no fault or neglect by Contractor shall be considered an additional Cost of the Work. Contractor's warranty obligations under this paragraph shall not apply to Work which has previously been accepted by Owner with knowledge of the alleged defect or nonconformity; to Work which has been altered, misused, abused or damaged through no fault of Contractor, including by wear and tear after Substantial Completion; or in the event Owner has failed and refused to make all payments due and owing to



Contractor under this Agreement. There are no other warranties, express or implied, which extend beyond the express terms hereof, except as noted in paragraph 11.2.

- 11.2 Notwithstanding the provisions of paragraph 11.1, with respect to any furniture, fixtures or equipment furnished or installed by Contractor in the project, the warranty shall be limited to the extent and time of warranty provided by the manufacturer of such item. Other than such manufacturer's warranties, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF SUCH GOODS ARE HEREBY DISCLAIMED BY CONTRACTOR.

#### **ARTICLE 12 MISCELLANEOUS**

- 12.1 Terms used in this Addendum and these Supplementary Conditions, which are defined elsewhere in the Contract Documents, shall have the meanings designated in those Contract Documents.
- 12.2 The Contract with this Addendum and Supplementary Conditions together with the Contract Documents as identified therein constitute the entire agreement between the parties and supersede any oral or prior written understanding or agreement. The terms of the Contract may not be modified orally, but only in writing by addendum or other memorandum signed by the parties. The provisions of the Contract are severable, and if any portion or provision of the Contract is held to be illegal, invalid or unenforceable under present or future laws applicable hereto, the remainder of the Contract shall nonetheless be valid and enforceable and remain in full force and effect. If suit is brought, arbitration is instituted, or legal counsel retained by either party in order to enforce the terms of the Contract or to collect any money due hereunder, the successful or prevailing party shall be entitled, in addition to other relief, to recover such party's reasonable attorneys' fees, costs and expenses in connection with such proceedings.